

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

THOMAS TURNER,

Defendant-Appellant.

UNPUBLISHED

November 25, 2003

No. 239991

Wayne Circuit Court

LC No. 01-004389

Before: Fort Hood, P.J., and Murphy and Neff, JJ.

PER CURIAM.

Defendant was convicted by a jury of felonious assault, MCL 750.82, possession of a firearm during the commission of a felony, MCL 750.227b, assault and battery, MCL 750.81, and domestic violence, MCL 750.81(2). He was sentenced to concurrent terms of five to forty months' imprisonment for felonious assault, ninety days in jail for domestic violence, and ninety days in jail for assault and battery. He was also sentenced to the mandatory consecutive two years' imprisonment for felony-firearm. He appeals as of right and we affirm.

Defendant contends that there was insufficient evidence to support his convictions, and that alternatively, the verdicts were against the great weight of the evidence. We disagree.

We review a sufficiency of the evidence claim de novo. *People v Lueth*, 253 Mich App 670, 680; 660 NW2d 322 (2002). We must view the evidence in a light most favorable to the prosecution and determine whether a rational trier of fact could have found all the elements of the offense proven beyond a reasonable doubt. *People v Wolfe*, 440 Mich 508, 515; 489 NW2d 748 (1992), amended 441 Mich 1201 (1992). Circumstantial evidence and reasonable inferences from the evidence may constitute sufficient evidence and credibility conflicts are resolved in favor of the jury's verdict. *People v Nowak*, 462 Mich 392, 400; 614 NW2d 78 (2000)

Defendant's main challenge to the sufficiency of the evidence presented at trial is his contention that the testimony used to convict him is untrustworthy and inherently incredible. However, we cannot interfere with the jury's role of determining the weight of evidence or the credibility of witnesses. *Id.* Viewing the evidence in the light most favorable to the prosecution we have no difficulty determining that a rational trier of fact could have concluded that the elements of the crimes were proven beyond a reasonable doubt.

The two victims of defendant's assaults were his girlfriend and her mother. Both testified that defendant hit his girlfriend and after her mother tried to intervene, threatened the mother with a gun. A rifle was later retrieved by police from a nearby dumpster where the girlfriend indicated defendant had thrown it.

Viewing the evidence in this light, we conclude that there was sufficient evidence to find defendant guilty of felonious assault.¹ The elements of felonious assault are: an assault, with a dangerous weapon, and with intent to injure or place a victim in reasonable fear or apprehension of an immediate battery. *People v Lawton*, 196 Mich App 341, 349; 492 NW2d 810 (1992). From the testimony of the victims, a reasonable jury could have concluded beyond a reasonable doubt that defendant possessed the rifle during the incident and used it to threaten the mother.

Defendant also argues that evidence of intent regarding the felonious assault charge was lacking. However, with felonious assault, the required intent may be inferred from the circumstances of defendant's actions. *Id.* at 350. In the present case, the jury could have inferred intent from the circumstances of defendant's actions. As in *Lawton*, defendant threatened the victim with a gun. Further, the testimony that defendant broke into the room after an initial physical altercation and threatened to "blow [the victim's] brains out," is such that a rational jury could infer that defendant intended to injure the victim or that she reasonably feared that defendant was going to harm her.

Defendant also argues that the verdict was against the great weight of the evidence. Defendant admits that a motion for new trial below did not preserve this issue and that we may decline to review it on that basis. *People v Winters*, 225 Mich App 718, 729; 571 NW2d 764 (1997). Defendant correctly argues that this issue, though not preserved, may be reviewed if failure to do so would result in a miscarriage of justice. *People v Noble*, 238 Mich App 647, 658; 608 NW2d 123 (1999). However, because there was evidence sufficient to support defendant's convictions, "no miscarriage of justice will result from [this Court's] failure to consider this issue or remand for a hearing regarding this issue." *Id.*

Affirmed.

/s/ Karen M. Fort Hood
/s/ William B. Murphy
/s/ Janet T. Neff

¹ Defendant confines his argument to attacking the felonious assault charge and, inferentially, the felony-firearm charge. The evidence clearly was also sufficient to support the felony-firearm, domestic violence, and assault and battery charges.